Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC	)	WC Docket No. 02-112
Separate Affiliate and Related Requirements	)	

COMMENTS OF SBC COMMUNICATIONS INC.

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TABLE OF CONTENTS

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SBC Communications Inc., on behalf of itself and its subsidiaries (collectively referred to as "SBC"), hereby submits its Comments in opposition to AT&T's Petition for Extension of SBC's Section 272 Obligations in the State of Texas.

I. INTRODUCTION AND SUMMARY

AT&T's petition to extend the section 272 obligations for SBC in Texas - despite clear Congressional intent that those provisions "sunset" three years after entry – should be seen for what it is: a transparent attempt by AT&T to raise the costs of its rivals by shackling them with burdensome, unnecessary regulations to which AT&T itself is not subject. The Commission has already permitted Verizon's section 272 obligations to sunset by operation of law and has deferred all broader policy issues to its *Sunset NPRM* proceeding. SBC's sunset in Texas raises no new issues and should be similarly decided. AT&T's weak attempt to distinguish New York from Texas and its disingenuous claims of discrimination and cross-subsidization provide no basis for a change of course. Therefore, AT&T's petition should be denied and SBC's section 272 obligations should be allowed to sunset by operation of law.

II. AT&T'S ATTEMPTS TO DISTINGUISH TEXAS FROM NEW YORK ARE UNAVAILING

The Commission has already concluded that, by their own terms, the structural separation requirements in section 272 (with limited exceptions) sunset, on a state-by-state basis, three years after the BOC has received section 271 authority in a state. Based on that conclusion, the

Commission held that Verizon is no longer subject to section 272 requirements in New York. There is no basis upon which the Commission could distinguish Texas from New York. Like Verizon in New York, SBC was granted section 271 authority in Texas three years ago after submitting to rigorous testing and state and federal analysis to prove that the market was "irreversibly open" to competition. Like Verizon, SBC was subject to a post-section 271 compliance review by the Commission's Enforcement Bureau and was not subject to any Commission action indicating non-compliance by SBC.[1] And as was the case with Verizon, SBC's section 272 biennial audit, conducted by an independent auditor and overseen by federal and state regulators, showed that SBC was in material compliance with section 272 safeguards and had not discriminated or engaged in cross subsidization in any way.[2]

In an effort to circumvent the Verizon precedent, AT&T attempts to argue that the circumstances in New York are somehow different from those in Texas and that those differences warrant retention of the structural separation requirements in Texas. As shown below, however, there are no material differences between the two states and AT&T's claims to the contrary are frivolous.

The first ostensible difference cited by AT&T is the claim that CLECs in Texas have a lower market share than CLECs in New York and that this somehow warrants retention of the structural separation requirements in Texas, even if not in New York. This argument should be rejected out-of-hand. As an initial matter, Texas is one of the most competitive states in the

[1] The Commission initiated a one year review to determine the BOC's compliance with section 271 conditions after obtaining in-region entry. SBC-Southwest's review period has expired and the Commission has taken no action indicating non-compliance.

[2] *See,* SBC Reply Comments in CC Docket No. 96-150, at 9-14 (Apr. 15, 2003) (*Biennial Audit Reply Comments*).

country, as evidenced by the fact that it was one of the first states to be found "irreversibly open" to competition. Indeed, notwithstanding AT&T's claims to the contrary, CLECs in SBC's service area in Texas have won more than twenty percent of the lines in that state, and their market share is *growing*, not shrinking. More to the point, the Commission has never established a market share test for section 272 sunset, much less held that CLECs must have at least as high a market share as they do in New York in order for the sunset provisions written into the Act to be given effect. Further, AT&T does not even purport to present the basis for any such test.[3] Indeed, any such test would be nonsensical given the unique characteristics of each state, the differing state regulations and pricing structures imposed by state commissions, and the different business plans of CLECs across the country.

The second basis offered by AT&T for distinguishing New York and Texas is the claim that, while Verizon made a "commitment" that it would not integrate its interLATA long distance operations with the BOC, SBC has made no such commitment. This argument is both incorrect and entirely frivolous. It is incorrect because Verizon did not, in fact, commit to retain structural separation; to the contrary, it specifically reserved its right to integrate its operations with the BOC.[4] But even if Verizon had made such a commitment, the Commission could hardly have based its decision to lift a requirement on the commitment of the carrier to continue complying with that requirement.

[3] Indeed, it is indicative of the levels to which AT&T will sink that it even suggests such a test here, given that AT&T itself argued for years that its own high market share was not indicative of market power and should not be a barrier to deregulation.

[4] *See* Letter dated January 13, 2003, to C. Mattey (FCC Wireline Competition Bureau) from G. Asch (Verizon) re: WC Docket No. 02-112. SBC also has no current plans to integrate in-region interLATA long distance operations with the BOC but is reviewing all its options.

The third and final basis on which AT&T purports to distinguish Texas and New York is its claim that state commissions for both states gave differing recommendations in the *Sunset NPRM*. According to AT&T, it is critical that, while the New York State commission did not oppose the sunset of section 272 safeguards for Verizon, the Texas State commission did. Once again, AT&T has mis-stated the facts. The New York State commission did not support the sunset for Verizon – it stated that the issue was premature, implying, if anything, that the sunset should *not* occur at this time. In any event, there is nothing in section 272 itself that gives decisional weight to state recommendations in this area. Indeed, unlike section 271, which requires the Commission to "consult with" state commissions before deciding a section 271 application, the Commission is under no obligation even to consult with state commissions before allowing the sunset provisions of the Act to take effect. Indeed, it is ironic that AT&T would point to the Texas PUC's position as a basis for distinguishing New York and Texas, given that, just last month, AT&T urged the Commission to ignore the Michigan Commission's recommendation that SBC be given section 271 authority in that state.

In short, there is no rational basis for treating Texas differently from New York for sunset purposes. Because the Commission has given effect to the section 272 sunset requirements in New York, it should do as well in Texas.

III. AT&T'S CLAIM THAT STRUCTURAL SEPARATION REQUIREMENTS REMAIN NECESSARY IS FLAWED ON THE MERITS.

Apart from its weak attempt to distinguish Texas and New York, AT&T recycles its arguments that structural separation remains necessary to prevent discrimination and cross-subsidization. These arguments did not persuade the Commission to retain the structural separation requirements in New York and they should not do so here.

AT&T's primary argument, as in the *Sunset NPRM*, is that the section 272 safeguards should be extended because SBC retains what AT&T characterizes as "substantial market power" in local markets in Texas. [5] According to AT&T, structural separation therefore remains necessary to prevent SBC from engaging in anti-competitive discrimination and cross-subsidization.

SBC has previously responded to this argument in the *Sunset NPRM* proceeding, and, instead of repeating those arguments here, refers the Commission thereto. As SBC there explained, AT&T's argument is meritless, and its claim that structural separation is a necessary or cost-effective way of preventing discrimination or cross-subsidization has been rejected repeatedly by the Commission over the course of almost two decades.

Although AT&T paints a deceptively one-sided and self-serving picture of competition in Texas, the fact of the matter is that there is significant and growing intramodal and intermodal local competition in Texas today. SBC estimates that wireline competitors in its service area in Texas have achieved over a 22% market share.[6] And, despite the downturn in the economy, CLEC market shares have been steadily *increasing* while SBC's access lines and revenues have been decreasing.[7] As AT&T well knows, Texas is one of the most competitive markets in the

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[5] *See*, AT&T Petition in WC Docket 02-112, at 8 (Apr. 10, 2003) (*AT&T Petition*).

[6] These estimates are based on CLEC numbers that SBC identified from its E911 records; a conservative methodology that the FCC has acceptable as reasonable in its § 271 applications. *See*, e.g., Evaluation of the U.S. Department of Justice in CC Docket No. 01-194, p.4, n.8 (Sept. 24, 2001) (*SBC Arkansas-Missouri 271 Application*) ("Estimated market share will vary depending on the methodology used to estimate facilities-based lines. The Department relied on entries in the E-911 database.")

[7] According to SBC's estimates, based on the E 911 methodology above, CLEC market share has increased 29 percent from year 2000 to year 2002, reflecting an average increase of 21,200 lines per month. AT&T's arguments, based on the Texas PUC's Competition Report, that CLEC market shares in Texas are decreasing, is inaccurate. For one thing, it compares FCC data for 2001 with Texas data for 2002, both of which were based on very different assumptions and reporting requirements. Second, this argument relies on FCC local competition data which, as explained in the Fact Report submitted in the

country today.[8] Indeed, Section 271 authority *could not* have been granted in Texas if the markets in that state were closed.

Because of the significant and growing competition in local services in Texas – particularly for those customers within the state whose retail services are not priced below cost – SBC does not have the market power attributed to it by AT&T. But, even if it did, that would in no way demonstrate the need for structural separation requirements. The Commission quite properly rejected the notion that market power requires structural separation shortly after the divestiture, when it lifted *Computer II* structural separation requirements for the provision of customer premises equipment and enhanced services by AT&T and the BOCs. Significantly, the Commission found structural separation to be unnecessary notwithstanding that AT&T and the BOCs were dominant in their respective markets; indeed, the BOCs not only were dominant, but retained franchised monopolies for local service. Moreover, the Commission had not yet implemented price caps, which it has repeatedly acknowledged significantly removes any ability of a carrier to engage in cross-subsidization.

Significantly, the Commission's determination that structural separation was "over-kill" – even then – turned out to be correct. The lifting of *Computer II* structural separation requirements did not result in widespread discrimination or cross-subsidization, as had been predicted in self-serving fashion by the competitors of AT&T and the BOCs, much as AT&T now argues. To the contrary, competition for CPE and enhanced services flourished.

Triennial Review proceeding, significantly understates the level of competition. *See* UNE Fact Report 2002, at App. A, CC Docket Nos. 01-338, 96-98 and 98-147 (Apr. 2002).

[8] AT&T's attempts to establish New York as a benchmark for market shares is nonsensical. Both the DOJ and this Commission specifically refused to adopt a market share test or benchmarks for § 271 entry in the long distance market. *See, In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a*

Since structural separation was not necessary – even for the provision of competitive services by franchised monopolies operating under rate of return regulation, it should go without saying that structural separation is not appropriate or necessary today in Texas or any other market for that matter. To the contrary, market forces and a host of regulatory reforms and obligations provide ample protection against discrimination and cross-subsidization.

As an initial matter, alleged concerns of discrimination ignore the real world. All carriers must build upon customer goodwill, not destroy it. Any attempt by a BOC to provide inferior service to other interexchange carriers – thereby creating inferior service for its local exchange customers – is more likely to alienate local exchange customers than win new interexchange customers. Moreover, in order for discrimination to affect customer decisions in the marketplace, that discrimination would have to be evident to customers. It should go without saying that if customers themselves are aware of discrimination, interexchange carriers would also be aware of the discrimination, and they would surely bring it to the attention of appropriate enforcement authorities. It would thus be irrational for any BOC to think that it could derive an advantage in the marketplace through discrimination.

Further, the Commission itself has recognized the numerous safeguards that will continue to exist even after the structural separation requirements sunset. In the *Non-Accounting Safeguards Order,* for example, it noted that:

> A number of safeguards will be available to prevent discriminatory behavior by BOCs after the separate affiliate requirements of section 272 cease to apply. As we explain in detail above, section 251(c)(5), section 251(g), and the Commission's rules imposing network disclosure and equal access requirements oblige BOCs to provide exchange access on a nondiscriminatory basis. In

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Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, *Memorandum Opinion and Order*, ¶ 268, 16 FCC Rcd 6237 (2001).

> addition, intraLATA services and facilities must be provided on a nondiscriminatory basis under section 251(c)(3) and the provision of interLATA services and facilities will continue to be governed by the nondiscrimination provisions of sections 201 and 202 of the Act. In addition, as local competition develops, it will provide a check on the BOCs' discriminatory behavior because competitors of the BOC affiliates will be able to turn to other carriers for local exchange service and exchange access. [9]

In addition to the statutes cited above, sections 272(e)(1) and (3) remain in effect after the sunset.[10] These provisions address the two keystones of nondiscriminatory behavior: parity in performance and access charges. The above provisions offer more than enough protection against discrimination.

Nor does sunset raise any risk of cross subsidization. As SBC has explained earlier, BOCs are subject to price cap regulation at both the state and federal level. Price cap regulation severs the link between regulated costs and prices, thereby eliminating any risk of cross subsidization.[11] Any legitimate concerns about cross-subsidization that may have existed years ago have been fully addressed by price caps.

Finally, the Commission has numerous enforcement options after the sunset. Section 271(d) continues to give the Commission authority to enforce sections 272(e)(1) and (3). Moreover, the section 208 complaint process allows carriers to collect monetary damages for violations of these

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[9] *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* CC Docket No. 96-149, *First Report and Order and Further Notice of Proposed Rulemaking*, at ¶ 271, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*).

[10] In the *Non-Accounting Safeguards Order*, the Commission determined that §§ 272(e)(2) and (4) will apply only if the BOC retains its separate affiliate after the sunset. If the BOC integrates its operations, however, these requirements will cease to apply.

[11] *See*, SBC Comments in WC Docket No. 02-112, at 13 (Aug. 5, 2002) (*Sunset NPRM Comments*).

nondiscrimination provisions. And the sunset does not affect the Commission's authority to impose forfeitures and other sanctions pursuant to sections 4(i), 503, and 206-209 of the Act. Given the extensive protections in the Act, there is absolutely no justification for extension of the structural separation requirements beyond the period contemplated by Congress.

A. Claims of SBC's Non-Compliance Are Baseless And, In Any Event, Irrelevant.

In an attempt to shore up its claims regarding discrimination and cross-subsidization, AT&T offers its usual litany of unsubstantiated, half-baked allegations that SBC is violating the Act in one fashion or another. SBC has responded to all these allegations in numerous other proceedings and will, therefore, keep its comments brief.[12] The important point, however, is that none of these claims – even if true – provides any basis for extending Section 272 requirements. In order for structural separation to be an appropriate response to allegations of misconduct, it must be shown, at a minimum, that structural separation would be an effective and appropriate check against the conduct claimed. AT&T does not even purport to make that showing, nor could it, frankly, since the violations it alleges ostensibly took place notwithstanding the application of structural separation. In any event, as shown below, the allegations are misleading and inaccurate.

One such claim by AT&T is its charge that its pending price squeeze complaint in Texas is evidence of discriminatory conduct by SBC. This charge is baseless. Although AT&T has filed a complaint, there is no commission or court finding that SBC has engaged in a price

[12] SBC incorporates by reference its comments and reply comments in the Section 272 Sunset NPRM Proceeding (SBC Comments in WC Docket No. 02-112, (Aug. 5, 2002) and SBC Reply Comments in WC Docket No. 02-112, (Aug. 26, 2002)); and its reply comments in the Section 272 Biennial Audit Proceeding (SBC Reply Comments in CC Docket No. 96-150, (Apr. 15, 2003)).

squeeze.[13] Another is AT&T's claim that by recently settling a Commission investigation on the reporting of its exchange access performance measures, SBC has effectively conceded that it is "discriminating" against competitors. AT&T is incorrect. The settlement related to certain data discrepancies for CLEC performance measures submitted to Commission pursuant to the Ameritech-SBC Merger Order.[14]

AT&T also points to SBC's Biennial Audit Report as evidence of SBC's discriminatory behavior. As SBC has explained in its Biennial Audit reply comments, the report provides overwhelming evidence that SBC was in material compliance with section 272 requirements. Although AT&T argues that the audit was not sufficiently thorough,[15] the extensive detail in the reports and the extensive oversight provided by state and federal regulators refute this assertion. Moreover, although AT&T asserts that the few discrepancies noted by the auditors demonstrate

[13] In Texas, AT&T filed a complaint against SWBT and SBC LD shortly after SBC received 271 relief, asking for reduction to cost of SWBT's intrastate switched access rates and claiming that SWBT's intrastate switched access rates and SBCLD's predatory prices created a price squeeze in the Texas long distance market. Following a ruling by the Texas PUC in favor of SWBT and SBC LD on the applicability of predatory pricing principles to the complaint, AT&T withdrew its predatory pricing claim. AT&T now claims that intra-corporate cross subsidization is causing the price squeeze. In 1999, the Texas Legislature set the level of intrastate switched access rates and also barred the PUC from subjecting, under any circumstances, a company that elected incentive regulation to a hearing, complaint, or determination regarding the reasonableness of its rates, revenues, rate of return, or net income. SWBT filed suit in state court to enjoin the Texas PUC from proceeding with an unlawful hearing. A District Court in Travis County, Texas, enjoined the Texas PUC from further proceedings on almost all issues related to AT&T's complaint. AT&T and the Texas PUC appealed the District Court decision to the state Court of Appeals, Third District of Texas, at Austin, where the case is currently pending.

[14] AT&T also argues that because SBC had to pay fines under its performance plan, the section 272 requirements must be maintained. As with AT&T's other issues, the payment of fines has nothing to do with maintaining structural separation. The performance plans, which include hundreds of measures and leave BOCs liable for millions of dollars in fines, will continue after section 272 sunsets, giving state commissions and CLECs exactly the same protections against discrimination in the local market that they have today.

[15] *See* AT&T Petition at 6.

noncompliance, the reports show that the auditors found no evidence of either discrimination or cross subsidization.[16]

AT&T nonetheless points to certain special access performance measures reported in the Biennial Audit and claims that the data show that SBC discriminates against its competitors in the provision of special access services. At the outset, SBC notes that although these measures have been available to carriers for a number of years, AT&T has never asked for the measures or filed a formal complaint with this Commission about SBC's performance. SBC provides these services to all carriers – affiliated and unaffiliated – under tariff and uses the same processes and procedures for ordering and provisioning of services for all, thereby ensuring parity treatment.

Further, as SBC explained in detail in its reply comments in the Biennial Audit, AT&T's reliance on the performance data to show discrimination is misplaced. While the performance measures data show that for some months and some measures the BOC performed better for its own affiliates, they also show that for other months it provided better service to non-affiliates. These data do not show any pattern of discrimination whatsoever. Moreover, the data do not provide an accurate picture of the BOC's performance. For instance, the measures for "customer desired due date" do not take into account that customers may request due dates that are longer or shorter than the BOC's standard due dates, or may extend originally requested installation dates based on changes in their plans or capabilities. Such differences in behavior can greatly skew the data. Additionally, any comparison between the data for the BOC's affiliates with that for non-affiliates is meaningless because the volume of orders that SBC received from its

[16] The nature of the audit, which was an "Agreed-Upon Procedures" instead of an 'attestation" audit, required the auditors to note every single issue regardless of its materiality. These minor discrepancies would not even have been noted in a regular attestation audit.

affiliates was much lower than the volumes from other carriers like AT&T and MCI. [17] Thus, AT&T's arguments are completely off the mark.

Based on these absurd allegations, that are not only misleading but have no relation to the need for structural separation, AT&T argues that the Commission should extend the section 272 safeguards until it has "revived" the biennial audit process. As SBC has stated above, the audit was extensive and was overseen by federal and state regulators from 13 states. The fact that the audit finds SBC in compliance with section 272 requirements does not mean that the audit process needs to be revived; it means that SBC is in compliance of the Act and its section 272 restrictions should sunset by operation of law as contemplated by Congress.

IV. AT&T COMPLETELY IGNORES THE SUBSTANTIAL COSTS OF STRUCTURAL SEPARATION.

The Commission has already concluded that the substantial costs of structural separation are unnecessary and that anticompetitive conduct can be deterred through nonstructural mechanisms. For example, in *Computer III*, the Commission determined that structural separation requirements impose substantial costs resulting from the duplication of facilities and personnel, limitations on joint marketing, deprivation of economies of scope, and increased transaction and production costs.[18] Further, the Commission has already declined to extend the Act's default sunset in section 272 for BOC information services.[19] Similarly, in the *Reverse*

[17] Where the volumes are comparable, the data shows that SBC provided superior service to non-affiliates than to its affiliates. *See* SBC's Biennial Audit Reply Comments at 14.

[18] *In the Matter of Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements,* CC Docket Nos. 95-20 and 98-10*, Further Notice of Proposed Rulemaking*, at ¶¶ 47 and 56, 13 FCC Rcd 6040 (1998) (*Computer III FNPRM)*.

[19] *Request for Extension of Sunset Date of the Structural, Nondiscrimination and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services,* CC Docket 96-149, Order, ¶¶ 3-4, 15 FCC Rcd 3267, (2000). "…based on the record before us, we find that there are several safeguards that will limit adequately BOCs' ability to discriminate against non-

Directory Services order, the Wireline Competition Bureau waived the CEI requirements for BellSouth's and Verizon's provision of interLATA information services because it found*, inter-alia*, that granting the petitions will be more efficient than requiring the BOCs to use separate personnel, provisioning, and databases, and that the cost of compliance with the CEI requirements would outweigh any potential benefits of compliance.[20] And, as discussed above, just six months ago the Commission allowed Verizon's section 272 obligations for New York to sunset by operation of law.[21]

AT&T argues that the BOCs have not substantiated their claims that compliance with the section 272 safeguards is particularly costly or that the costs outweigh the benefits.[22] That is incorrect. SBC has explained in great detail in the *Sunset NPRM* that to comply with section 272 rules, SBC – unlike its competitors - must duplicate its resources. SBC estimates that it would save between 20 percent and 75 percent on different functions if it were able to integrate its local and long distance operations.[23] Verizon estimates that it has spent $314 million "solely to meet the Section 272 separation requirements" and will spend another $550 million through 2006.[24] Verizon also notes that "[t]he costs of complying with separate affiliate rules divert capital from

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affiliated information service providers even after Section 272(f)(2) takes effect. For example, there are non-structural safeguards that will limit the BOCs ability to discriminate against non-affiliated information service providers."

[20] *BellSouth Petition for Waiver of the Computer III Comparably Efficient Interconnection Requirements and Petition of the Verizon Telephone Companies for Waiver of Comparably Efficient Interconnection Requirements to Provide Reverse Directory Assistance*, CC Dockets 01-288 and 02-17*, Memorandum Opinion and Order*, 17 FCC Rcd 13881 (2002).

[21] FCC Public Notice, "Section 272 Sunsets for Verizon in New York State By Operation of Law on December 23, 2002, Pursuant to Section 272(f)(1)" (Dec. 23. 2002).

[22] *See* AT&T Petition at 19.

[23] *See* SBC's Sunset NPRM Reply Comments at 16.

[24] *See* Verizon Sunset NPRM Comments at 10 (footnote omitted).

productive investments and development of innovative services."[25] SBC's investment options are similarly limited by this competition for financial resources.

AT&T also argues that because the Commission's orders provide BOCs and their section 272 affiliates with numerous opportunities to share services, the Commission has already substantially reduced the BOCs' cost of compliance with the section 272 requirements.[26] AT&T's argument is flawed for two reasons. First, it ignores the significant costs that BOCs *continue* to incur as a result of structural separation, despite Commission relief on sharing of administrative and other services. That the Commission has permitted BOCs to share some services with their long distance affiliates does not mean that other structural separation requirements should stay in place, despite clear congressional intent to the contrary.

Second, this argument ignores other inefficiencies and competitive disadvantages that the section 272 requirements impose on the BOCs. Thus, for instance, section 272 requires the BOC to share, on a nondiscriminatory basis, any BOC information that it shares with its section 272 affiliates. This rule imposes enormous inefficiencies on SBC because it has to create artificial walls between its BOC and section 272 employees to avoid any inadvertent sharing of proprietary information. It also hampers SBC's competitive offerings in the market because the information sharing restrictions prevent SBC from taking advantage of the enormous resources within its own company to develop better and more suitable product offerings for its customers. Of course, BOCs competitors are not saddled with similar restrictions.

[25] *See* Verizon Sunset NPRM Comments at 11.

[26] *See* AT&T Petition at 20-21. Of course, AT&T fails to mention that, true to form, it has objected to SBC's sharing of even those permissible services.

Similarly, because this Commission has – incorrectly – subjected many joint-marketing activities to the nondiscrimination provisions of section 272, BOCs have been severely restricted in their offerings of competitive bundled services. As SBC has briefed in other proceedings, one of the cornerstones of the Communications Act is that consumers can receive bundled local, long distance, broadband, and other services from one source. Although Congress specifically envisioned that BOCs – like their competitors – could jointly market their local and long distance services without any nondiscrimination obligations, this Commission took an overly formalistic and restrictive view of the definition of "joint marketing" and excluded from this definition joint product planning and development or post sales customer care activities. As a result, BOCs today cannot engage in product planning and designing or in providing post sale customer care to their long distance affiliates without a corresponding obligation to provide the same services to their competitors. These restrictions, forcing BOCs to either keep at "arms-length" from their long distance companies or to share sensitive information and services with their competitors, place them at a severe disadvantage in today's competitive market.

AT&T is well aware of the costs and inefficiencies imposed by section 272 rules; in fact, that is precisely why it wants these requirements to be extended. Carriers like AT&T that can integrate their local and long distance operations and offer competitive bundled packages have an advantage over the BOCs, most critically in the provision of complex services to large business customers. It is imperative that the Commission allow SBC's section 272 requirements to sunset and force AT&T to compete in a free and open marketplace instead of relying on regulatory constraints for an artificial competitive advantage.

V. CONCLUSION

The Commission has already permitted Verizon's section 272 obligations to sunset by operation of law and has deferred all broader policy issues to its *Sunset NPRM* proceeding. SBC's sunset raises no new issues and AT&T's attempts to distinguish the two should be rejected. Likewise, AT&T's weak claims of discrimination and cross subsidization provide no basis for a change of course. On the other hand - as the Commission has long recognized - the significant costs of structural separation clearly outweigh its benefits. Therefore, AT&T's petition should be denied and SBC's section 272 obligations should be allowed to sunset by operation of law, as contemplated by Congress.

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CERTIFICATE OF SERVICE

I, Lacretia Hill, do hereby certify that on this 12th day of May, a copy of the foregoing "SBC's Comments" was served via U.S. First Class Postage Paid to the parties below.

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